
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Michael David Oaks)	File No. EB-03-PO-128
)	
Unlicensed FM Radio Station)	NAL/Acct. No. 200432920002
Beaverton, Oregon)	FRN # 0010288587
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 12, 2004

By the Enforcement Bureau, Portland Resident Agent Office:

I. Introduction

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Michael David Oaks apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended, (“Act”),¹ by operating unlicensed radio transmitting equipment without Federal Communications Commission (“FCC”) authorization. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),² that Michael David Oaks is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. Background

2. On June 3, 2003, the FCC Enforcement Bureau’s Portland Resident Agent Office (“Portland Office”) received information that a FM station was operating in Beaverton, Oregon, on the frequency 98.1 MHz. The information indicated that the station identified as “Energy 98.” The FCC’s records showed no license issued for this frequency in Beaverton.

3. On June 9, 2003, an agent of the Portland Office located the signal on 98.1 MHz at Beaver Creek Apartments, 12270 S.W. Center, Apartment 43, Beaverton, Oregon. At that address, the agent observed a vertical antenna mounted on a tripod which was resting on the balcony of the apartment. Field strength measurements showed that the field strength of the station’s signal exceeded the permissible level for a non-licensed low-power radio transmitter by 1,719 times. Commission authorization is required to operate a station on 98.1 MHz based upon the field strength measured by the agent.³ An on-scene Notice of Unlicensed Radio Operation, dated June 9, 2003, was placed under the door.

¹ 47 U.S.C. § 301.

² 47 U.S.C. § 503(b).

³ Section 15.239 of the Commission’s Rules, 47 C.F.R. § 15.239, provides that non-licensed broadcasting in the 88-

4. On June 11, 2003, the Portland Office sent a formal Notice of Unlicensed Radio Operation (“Notice”) to Michael David Oaks at Beaver Creek Apartments, 12270 S.W. Center, Apartment 43, Beaverton, Oregon 97005 via certified and regular mail. The Notice sent via certified mail was returned as “unclaimed.” The Notice sent by regular mail has not been returned to the Portland Office.

5. On July 3, 2003, an agent of the Portland Office spoke with Mr. Oaks regarding the legal operation of radio stations in the FM broadcast frequency band. Mr. Oaks admitted to operation of the unlicensed station from his apartment, 12270 S.W. Center, Apartment 43, Beaverton, Oregon.

6. On July 14, 2003, an agent of the Portland Office again located a signal on 98.1 MHz at Mr. Oaks’ residence at Beaver Creek Apartments, 12270 S.W. Center, Apartment 43, Beaverton, Oregon. Field strength measurements showed that the field strength of the station’s signal exceeded the permissible level for a non-licensed low-power radio transmitter by 435 times. Commission authorization is required to operate this station.⁴ A second on-scene Notice of Unlicensed Radio Operation, this one dated July 14, 2003, was placed under the door.

7. On September 16, 2003, an agent of the Portland Office again located a signal on 98.1 MHz at Mr. Oaks residence at Beaver Creek Apartments, 12270 S.W. Center, Apartment 43, Beaverton, Oregon. Field strength measurements showed that the field strength of the station’s signal exceeded the permissible level for a non-licensed low-power radio transmitter by 85 times. Commission authorization is required to operate this station.⁵ On September 17, 2003, a second formal Notice of Unlicensed Radio Operation (Second Notice) was issued to Mr. Oaks via certified and regular mail. The Second Notice sent by certified mail was returned as “unclaimed.” The Second Notice sent by regular mail has not been returned to the Portland Office.

III. Discussion

8. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or any rule, regulation or order issued by the Commission there under, shall be liable for a forfeiture penalty.⁶ The term “willful” as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly and the term “repeated” means the commission or omission of the act more than once or for more than one day.⁷

108 MHz band is permitted only if the field strength of the transmissions does not exceed 250 µV/m at three meters.

⁴ See 47 C.F.R. § 15.239.

⁵ See 47 C.F.R. § 15.239.

⁶ 47 U.S.C. § 503(b).

⁷ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991). Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to Section 503(b), provides: “[t]he term ‘repeated’, when use with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

9. Section 301 of the Act sets forth generally that no person shall use or operate radio transmitting equipment within the United States except under and in accordance with the Act and with a license.⁸ On June 9, 2003, July 14, 2003, and September 16, 2003, Mr. Oaks operated radio transmitting equipment on the frequency 98.1 MHz without the required Commission authorization. The record reveals that the FCC warned Mr. Oaks, both verbally and in writing, on no less than three separate occasions, that the unlicensed operation of radio transmitting equipment at power levels in excess of the Part 15 limits violated the Act and could subject him to severe penalties. Mr. Oaks admitted to operation of the station and continued operation of the radio transmitting equipment beyond the Part 15 limits and continued operation of the radio transmitting equipment without a license after multiple warnings.

10. Based on the evidence before us, we find that Michael David Oaks willfully and repeatedly violated Section 301 of the Act by operating radio transmitting equipment without a license on June 9, 2003, July 14, 2003, and September 16, 2003. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, (*Forfeiture Policy Statement*),⁹ and Section 1.80 of the Commission Rules,¹⁰ the base forfeiture amount for unlicensed operation is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹¹ In applying Section 1.80(b)(4) of the Rules and the statutory factors to the instant case, we find no compelling evidence to support any adjustments to the base forfeiture amounts. Therefore, a total forfeiture in the amount of \$10,000 is warranted.

IV. Ordering Clauses

11. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Michael David Oaks is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willfully and repeatedly violating Section 301 of the Act.¹²

12. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Michael David Oaks SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

⁸ 47 U.S.C. § 301.

⁹ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

¹⁰ 47 C.F.R. § 1.80(b)(4).

¹¹ 47 U.S.C. § 503(b)(2)(D).

¹² 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311 and 1.80.

Federal Communications Commission

13. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the NAL/Acct. No. and FRN referenced in the caption.

14. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, S.W., Washington, D.C. 20554, Attn: Enforcement Bureau - Spectrum Enforcement Division, and must include the NAL/Acct. No. and FRN referenced in the caption.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹³

17. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Spectrum Enforcement Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at 202-418-0990.

18. IT IS FURTHER ORDERED THAT a copy of this Notice of Apparent Liability shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Michael David Oaks at Beaver Creek Apartments, 12270 S.W. Center, Apartment 43, Beaverton, Oregon 97005.

FEDERAL COMMUNICATIONS COMMISSION

James Lafontaine
Resident Agent
Portland Resident Agent Office, Enforcement Bureau

¹³ See 47 C.F.R. § 1.1914.

Federal Communications Commission

Enclosure: FCC List of Small Entities